



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2020-05  
**The Prosecutor v. Salih Mustafa**

**Before:** Pre-Trial Judge  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Filing Participant:** Dr Fidelma Donlon

**Date:** 6 May 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**‘Third Registry Report to the Pre-Trial Judge on Victims’ Applications for  
Participation in the Proceedings’, filing F00109 dated 30 April 2021**

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**Specialist Prosecutor’s Office**

Jack Smith

**Counsel for the Accused**

Julius von Bóné

**Head of Victims’ Participation Office**

Silke Studzinsky

## I. INTRODUCTION

1. The Victims' Participation Office ("VPO") hereby files the third report ("Third Report") on victims' applications for participation in the proceedings pursuant to Rule 113(2) of the Rules.<sup>1</sup>

2. With this Third Report, the VPO transmits to the Pre-Trial Judge four applications for the status of a participating victim in the proceedings and provides a recommendation on admissibility, grouping, common representation and protective measures.

## II. PROCEDURAL HISTORY

3. On 12 June 2020, the Pre-Trial Judge confirmed the indictment against Mr Salih Mustafa ("the Accused").<sup>2</sup>

4. A public redacted version of the Confirmed Indictment was filed on 28 September 2020, following the arrest and transfer of the Accused to the Detention Facilities of the Specialist Chambers in The Hague, the Netherlands.<sup>3</sup>

5. On 27 November 2020, the Pre-Trial Judge issued the "Framework Decision on Victims' Applications" ("Framework Decision") setting out the requirements of the application process and the role of the VPO.<sup>4</sup>

6. On 9 December 2020, the VPO submitted the first report on victims' applications for participation in the proceedings to the Pre-Trial Judge ("First Report").<sup>5</sup>

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<sup>1</sup> Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), KSC-BD-03/Rev3/2020, 2 June 2020.

<sup>2</sup> KSC-BC-2020-05/F00008, Decision on the Confirmation of the Indictment Against Salih Mustafa, 12 June 2020, strictly confidential and *ex parte*. A public redacted version was filed on 5 October 2020.

<sup>3</sup> KSC-BC-2020-05/F00019/A01, Annex 1 to Submission of Further Redacted Version of Confirmed Indictment, 28 September 2020, public.

<sup>4</sup> KSC-BC-2020-05/F00055, Framework Decision on Victims' Applications, 27 November 2020, public (ordering, *inter alia*, VPO to submit its first report pursuant to Rule 113(2) of the Rules by 10 December 2020 and to submit further reports, if any, on a regular basis, the latest by the submission of the Defence filing pursuant to Rule 95(5) of the Rules).

<sup>5</sup> KSC-BC-2020-05/F00062, First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 9 December 2020, public, with strictly confidential and *ex parte* Annexes 1-4.

7. On 10 February 2021, the Pre-Trial Judge issued the first decision on victims' participation ("First Decision").<sup>6</sup>
8. On 1 April 2021, the VPO submitted the second report on victims' applications for participation in the proceedings to the Pre-Trial Judge ("Second Report").<sup>7</sup>
9. On 30 April 2021, the Pre-Trial Judge issued the second decision on victims' participation ("Second Decision").<sup>8</sup>
10. From the filing of the Second Report to date, the VPO has received four applications from persons wishing to apply for admission in the proceedings as participating victims. VPO assisted the applicants with filling in the application forms.

### III. CLASSIFICATION

11. The VPO files this Third Report as confidential and *ex parte* in accordance with Rule 113 of the Rules. As with the First and Second Reports, the VPO has no objection to the reclassification of this Third Report so that it can be disclosed to the Parties, as it contains no identifying information of the applicants. In the event that the Pre-Trial Judge decides to re-classify this Third Report, this Third Report also constitutes the Report to the Parties pursuant to Rule 113(2) of the Rules.<sup>9</sup>
12. Together with this Third Report, the VPO submits five strictly confidential and *ex parte* Annexes. Annex 1 contains the table indicating the number and details of applicants recommended for admission (Group A).<sup>10</sup> The remaining four annexes are summaries of the applications prepared by the VPO, along with basic information on the applicants, a summary of the alleged events and harm suffered, and any request for protective measures. The Annexes do contain identifying information and are

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<sup>6</sup> KSC-BC-2020-05/F00075, First Decision on Victims' Participation, 10 February 2021, public.

<sup>7</sup> KSC-BC-2020-05/F00099, Second Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings, 1 April 2021, confidential, with confidential and *ex parte* Annexes 1-6.

<sup>8</sup> KSC-BC-2020-05/F00105, Second Decision on Victims' Participation, 30 April 2021, confidential.

<sup>9</sup> See Framework Decision, para. 49.

<sup>10</sup> See Framework Decision, para. 24(e)a.

therefore filed as strictly confidential and *ex parte* pursuant to Rules 82 and 113(2) of the Rules.

13. The application forms and supporting documentation have been disclosed only to the Pre-Trial Judge through Legal Workflow in accordance with Rule 113(1) of the Rules, which provides that application forms shall not be disclosed to the Parties.

#### IV. ASSESSMENT OF APPLICATIONS

14. The VPO has assessed the formal completeness of the application forms and the content of the applications in light of the requirements stemming from the definition of a participating victim under Article 22(1) of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 113(1) of the Rules.

##### A. COMPLETENESS OF APPLICATION FORMS

15. In assessing the completeness of the applications, the VPO checked the applications against the criteria listed in the Framework Decision.<sup>11</sup> In line with those requirements, all applications submitted with this Third Report can be considered as formally complete.

##### B. CRITERIA OF ADMISSIBILITY AND STANDARD OF PROOF

###### 1. Standard of proof

16. In assessing the applications and making its recommendation in this Third Report, the VPO applied the *prima facie* standard<sup>12</sup> for all requirements as well as any supporting documentation.

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<sup>11</sup> See Framework Decision, para. 22.

<sup>12</sup> See Rule 113 (4) of the Rules. *Prima facie* means that the Pre-Trial Judge reviews the submitted information and supporting material on a case-by-case basis, taking into account: (i) all relevant circumstances as apparent at first sight; and (ii) the intrinsic coherence of the application. See Framework Decision, para. 28.

## 2. Criteria of Admissibility

17. The VPO based the assessment on the same general principles and criteria as in the First Report,<sup>13</sup> following the guidelines and requirements set out in the Framework Decision.<sup>14</sup> The VPO has based its assessment and recommendation to the Pre-Trial Judge on the following requirements:

### (a) Natural person

18. The VPO notes that the applications do not raise questions regarding the requirement for an applicant to be a “natural person”. All applicants submitted a valid ID card as supporting documentation.

### (b) Alleged crimes

19. The VPO assessed whether acts described in the applications appear to constitute crimes within the scope of the Confirmed Indictment, namely arbitrary detention, cruel treatment, torture, murder; and whether the alleged events have taken place in a detention compound located in Zllash/Zlaš between approximately 1 April 1999 and around the end of April 1999.<sup>15</sup>

20. The applicants alleged the following crimes: imprisonment/illegal or arbitrary arrest and detention, cruel treatment/other inhumane acts, torture and murder.

21. All the crimes alleged in the applications are crimes reflected in the Confirmed Indictment.<sup>16</sup> In other words, the crime(s) in relation to which each applicant claims to be a victim fall within the material, geographical, and temporal parameters of the charges as set out in the Confirmed Indictment.<sup>17</sup>

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<sup>13</sup> See First Report, paras. 16-19.

<sup>14</sup> See Framework Decision, paras. 29-38.

<sup>15</sup> See KSC-BC-2020-05/F00019/A01, paras 34-35.

<sup>16</sup> See Framework Decision, para. 31.

<sup>17</sup> See Second Decision, para. 27.

(c) Harm

22. In reviewing the applications, the VPO assessed physical, mental and material harm, which is described sufficiently in detail in all applications.<sup>18</sup>

23. Regarding the requirement that harm has to be suffered *personally* by the victim, one applicant can be considered a direct victim (Victim-10/05), and three applicants (Victim-11/05, Victim-12/05 and Victim-13/05) can be considered indirect victims.<sup>19</sup>

24. The direct victim claims to have suffered physical, mental, and material harm as a result of unlawful detention, cruel treatment and torture, as described in the application form and annexed application summary.

25. The three indirect victims claim to have suffered mental harm as a result of the unlawful detention, torture and murder [REDACTED] and provided supporting documentation [REDACTED]. For indirect victims, the VPO assessed whether the applicants have alleged that the harm they have suffered results from the harm suffered by the direct victim and whether the harm is a result of a close personal relationship with the direct victim.<sup>20</sup> Immediate family members (spouse, parents, children, siblings) are presumed to be in a close personal relationship with the direct victim.<sup>21</sup> Other family members having a special bond of affection with or dependence on the direct victim may also be considered to be in a close personal relationship with the direct victim.<sup>22</sup>

26. In terms of mental harm suffered by indirect victims, emotional suffering (such as grief, sorrow, bereavement or distress) of an indirect victim as a result of the death

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<sup>18</sup> See Second Decision, paras 27, 32-37.

<sup>19</sup> See Framework Decision, para. 33; Second Decision, para. 32.

<sup>20</sup> See Framework Decision para. 33; Second Decision, para. 35.

<sup>21</sup> Second Decision, para. 32; see also STL, *Prosecutor v. Ayyash et al.*, Pre-Trial Judge, Decision on Victims' Participation in the Proceedings ('*Ayyash et al.* Decision on Victim Participation'), STL-11-01/PT/PTJ, F0236, 8 May 2012, para. 84.

<sup>22</sup> Second Decision, para. 32; see also *Ayyash et al.* Decision on Victim Participation, paras 49-50. Similarly, ICC, *Prosecutor v. Lubanga*, ICC-01/04-01/06-1813, Trial Chamber I, Redacted version of "Decision on 'Indirect Victims'", 8 April 2009, paras 44, 50; ECCC, *Prosecutor v. Kaing Guek Eav alias Dutch*, Trial Chamber, Judgment, 001/18-07-2007/ECCC, 26 July 2010, para. 643.

or grave injury of a direct victim is presumed, provided that the close relationship between them is sufficiently established.<sup>23</sup>

27. [REDACTED]. [REDACTED], and the VPO considers that the requirement of a close personal relationship with the direct victim has been sufficiently demonstrated in their statements and other supporting material.<sup>24</sup> Considering the above, all three indirect victims meet *prima facie* the necessary requirements as to harm suffered and the requisite close personal relationship with a direct victim.

**(d) Direct result**

28. The VPO assessed whether there is evidence of a causal link between harm and crime.<sup>25</sup> The VPO assessed that all applicants meet this requirement on a *prima facie* basis.

**3. General description of the applications**

29. Applicant Victim-10/05 is of Albanian ethnicity and claims to be a direct victim of unlawful detention, cruel treatment and torture in Zllash/Zlaš detention compound within the relevant period. He claims to have suffered physical, mental, and material harm.

30. Applicants Victim-11/05, Victim-12/05 and Victim-13/05 are of Albanian ethnicity and claim to be indirect victims of the unlawful detention, torture and killing [REDACTED] in Zllash/Zlaš detention compound within the relevant period. All applicants claim to have suffered mental harm.

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<sup>23</sup> Second Decision, para. 35.

<sup>24</sup> For more details, see application summaries of Victim-11/05 and Victim-13/05.

<sup>25</sup> See Framework Decision, para. 38; Second Decision, para. 37. More details on meeting the criteria of the “direct result” requirement can be found in the description of the events in the application forms and the application summaries annexed to this Third Report.

### C. RECOMMENDATION ON ADMISSIBILITY

31. The VPO recommends to the Pre-Trial Judge to admit all four applicants as participating victims.<sup>26</sup>

## V. GROUPING OF VICTIMS AND COMMON LEGAL REPRESENTATION

### A. RECOMMENDATION ON GROUPING

32. In making the recommendation to the Pre-Trial Judge on grouping, the VPO considered the criteria set out in Rule 113(8) of the Rules by looking into the individual circumstances of each applicant and the composition of the group as a whole. The VPO has followed the guidelines set out by the Pre-Trial Judge in the Framework Decision.<sup>27</sup> The VPO has also considered the general observations and jurisprudence outlined in the Second Report.<sup>28</sup>

33. As regards the individual circumstances of the applicants, they [REDACTED], speak Albanian, and allege to be victims of crimes committed at the same crime site. The VPO has not identified any issues, differences, or potential conflicts of interest in the applications that would warrant separate representation.

34. Accordingly, the VPO recommends the Pre-Trial Judge to group the four applicants together with applicants admitted to the proceedings as participating victims and represented as one group (Group 1).<sup>29</sup>

### B. COMMON LEGAL REPRESENTATION

35. As regards preferences on legal representation, one applicant stated he would like to be represented by a highly qualified counsel, and one applicant stated that he does not wish to have a lawyer [REDACTED].

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<sup>26</sup> The recommendation is based on the *prima facie* standard. See paragraph 16, above.

<sup>27</sup> See Framework decision, para. 42; Second Decision, para. 48.

<sup>28</sup> See Second Report, paras. 29-37.

<sup>29</sup> Second Decision, paras 39, 48.



36. The VPO shall base its proposal for assignment of Victims' Counsel to the Registrar based on a range of objective criteria, as described in the Second Report.<sup>30</sup>

## VI. PROTECTIVE MEASURES

### A. PROTECTIVE MEASURES

37. In the Framework Decision, the Pre-Trial Judge listed the relevant protective measures at this stage of proceedings.<sup>31</sup> All of the applicants have requested that their identifying information not to be disclosed to the public, the Accused, and Defence Counsel.

### B. RECOMMENDATION

38. In making its recommendation on protective measures, the VPO has taken into consideration the legal test, as instructed by the Pre-Trial Judge in the Framework Decision.<sup>32</sup> The VPO notes that the concerns expressed in detail in the Second Report and summarised in the Second Decision affect all victims applying for participation, including the four applicants included in this Third Report.<sup>33</sup> Additionally, all of the applicants: (i) continue to suffer from ongoing trauma; (ii) express fears or concerns for their safety or that of their family members, should their identities become known; and (iii) [REDACTED].<sup>34</sup>

39. All of the applicants are particularly vulnerable, and the VPO considers that the full range of protective measures is strictly necessary in light of the objectively justifiable and heightened risk to the applicants and their families [REDACTED] and that no less restrictive measures are sufficient or feasible to protect the applicants or their families, taking into account their individual circumstances.

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<sup>30</sup> See Second Report, paras 42-43.

<sup>31</sup> See Framework Decision, para. 45.

<sup>32</sup> See Framework Decision, para. 46.

<sup>33</sup> See Second Report, paras. 46-47; Second Decision, para. 40.

<sup>34</sup> See Second Decision, para. 43.

40. Moreover, the VPO is of the view that the relevant protective measures are proportionate at this early stage of the proceedings where the precise role of participating victims is yet to be determined.<sup>35</sup> Such protective measures do not prejudice the rights of the Accused at this stage, but not granting them could have irreversible consequences for the applicants. As noted by the Pre-Trial Judge, adequate protective measures for victims are often the legal means by which their participation in the proceedings can be secured, because they are a necessary step in order to safeguard the victims' safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.<sup>36</sup>

41. Thus, the VPO requests the Pre-Trial Judge to grant the following protective measures to all applicants: (i) the redaction of names and identifying information from the Specialist Chambers public records (Rule 80(4)(a)(i)); (ii) non-disclosure to the public of any records identifying the applicant (Rule 80(4)(a)(ii)); (iii) the assignment of a pseudonym (Rule 80(4)(a)(vi)); (iv) Anonymity towards the Accused (Rule 80(4)(d)); and (v) Anonymity towards Defence Counsel (Rule 80(4)(e)).

42. The VPO considers that the above-requested protective measures are strictly necessary, appropriate and proportionate at this stage of the proceedings.<sup>37</sup>

**Word count: 2463**



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**Dr Fidelma Donlon**  
**Registrar**

Thursday, 6 May 2021  
At The Hague, the Netherlands

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<sup>35</sup> See Second Report, para. 51.

<sup>36</sup> Second Decision, para. 43.

<sup>37</sup> See Framework Decision, para. 46.